IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

Writ Petition No. 2883 of 2003
Bharatratna Dr. Babasaheb Ambedkar
V.K.S. & Ors. .. Petitioners
V/s.
Commissioner for Corporation
and Registrar & Ors. .. Respondents

WITH
Writ Petition No. 3266 of 1992
Abdul Lat Vividh Karyakari
Sahakari (Vikas) Seva Society Ltd. .. Petitioner
V/s.
State of Maharashtra & Others .. Respondents.

WITH
Writ Petition No. 1826 of 2002
Shri Arun V.K.S. (V) Seva Soc.
Ltd. Chandur and Ors. .. Petitioners
V/s.
Commissioner for Co-operation
and Registrar, Co-op. Societies
Mah. State, Pune and Ors. .. Respondents

WITH
Writ Petition No. 2592 of 1992
Shiroli Vividh Karyakari
Sahakari (Vikas) Seva Sanstha
Maryadit .. Petitioner
V/s.
State of Maharashtra & Ors. .. Respondents

WITH
Writ Petition No. 7088 of 1998
Abdul Lat Vividh Karyakari Sahakari
(Vikas) Seva Society Ltd. .. Petitioner
V/s.
The State of Maharashtra & Ors. .. Respondents.

Mr. M.L. Patil for the Petitioners.
Mr. R.M. Patne, AGP. for the Respondent Nos. 1 to 3.
Mr. T.S. Ingale for the Respondent No. 2.

CORAM : S. RADHAKRISHNAN &
S.A. BOBDE, JJ.
DATED : 05.10.2004.

P.C.:-

1. Heard the learned counsel for the Petitioners and the learned counsel for the Respondents. In all the above Petitions a very short issue is involved with

regard to the deduction made by the Respondent No. 2 being the Kolhapur District Supervision (Dekhrekh) Sahkari Society Ltd., Kolhapur.

2. Shri Patil, the learned counsel appearing on behalf of the Petitioners brought to our notice that as per Rule 53-A of Maharashtra Co-operative Societies Rules, 1961, the specified rates of annual contribution to the Co-operative State Cadre Employment Fund are laid down in the table mentioned in the said Rules. As far as the Petitioners are concerned, their case is governed by the clause (9)(iv), which deals with Agricultural Credit Society having outstanding agricultural credit business exceeding Rs. 3,00,000/- at the end of the previous co-operative year. As far as such societies are concerned, Respondent No. 2 is entitled to recover 125% of the actual expenditure on the total emoluments paid to the Secretary during the previous co-operative year or 2% of the outstanding of the agricultural credit business at end of the previous co-operative year **'whichever is less' (emphasis supplied).**

3. Shri Patil, the learned counsel appearing for the Petitioners made it very clear that the Petitioner Societies are ready and willing to pay either 125% of the actual expenditure on the total emoluments paid to the Secretary during the previous co-operative year or 2% of the outstanding of the agricultural credit business at the end of the previous co-operative year, **whichever is less,** as clearly mentioned in Rule 53-A,

of the Maharashtra Co-operative Society Rules, 1961. The learned counsel appearing for the Petitioners pointed out that, however, the Respondent No. 2 has excessively collected amounts from the Petitioner Societies in the sense that they have deducted 2% of the total outstanding of the agricultural credit business at the end of co-operative year, which is much more than the actual total emoluments paid to the Secretary, i.e. even, if one were to take 125% of the total emoluments paid to the Secretary as indicated in the aforesaid Rule 53-A, the amount would be only around 1/3rd of the amount already collected.

4. Shri Ingale, the learned counsel appearing on behalf of the Respondent No. 2 sought to justify the said increase on the basis of recommendation made by Padmashree Shamrao Kadam Committee appointed by the Government of Maharashtra. The Government Resolution dated 13.10.1989 incorporates the decision of the said committee. In clause (3) of the said Government Resolution, it is made explicitly clear that the recommendations of the said committee will be made applicable only after the amendment in Maharashtra Co-operative Societies Act and Rules. There is no dispute that till date, no such amendment has either been carried out in the Maharashtra Co-operative Societies Act, 1960 or even in Maharashtra Co-operative Societies Rules, 1961. Shri Ingale, sought to contend

that though the amendment has not been carried out, the Respondent No. 2 is collecting on the basis of the above recommendation in the said Padmashree Shamrao Kadam Committee.

5. After having considered the arguments of both the sides, it is very clear that even the aforesaid Government Resolution makes it abundantly clear that as per the said recommendation, appropriate amendments had to be made in either the Maharashtra Co-operative Societies Act, 1960 or the Maharashtra Co-operative Societies Rules, 1961, which has not been done till today. If that be so, in the existing Maharashtra Co-operative Societies Rules, Rule 53-A provides for recovery only of either 125% of the actual expenditure on the total emoluments paid to the Secretary during the previous co-operative year or 2% of the outstanding of the agricultural credit business at the end of the previous co-operative year, whichever is less, towards the aforesaid fund.

6. Under the aforesaid facts and circumstances, we are clearly of the view that the levy and deduction made by the Respondent No. 2 as aforesaid for all these years is totally impermissible in law and hence we direct the District Deputy Registrar, Kolhapur to compute in each of these years, the actual expenses on the total emoluments paid to the Secretary during the relevant

co-operative year and also calculate 125% thereon and the said officer shall also compute 2% of the outstanding of the agricultural credit business at the end of the previous co-operative year, whichever is less, the Respondent No. 2 shall be entitled to recover the same towards the said fund. In the said exercise of such calculations, if it is found that any excess amount has been paid by the concerned Petitioner Society, the excess amount shall be adjusted towards the payment liable to be made by the Petitioner Society for the future years. Rule is made absolute in the above terms. We hope and trust that the State of Maharashtra will implement the recommendations of the aforesaid committee as expeditiously as possible.

(S. RADHAKRISHNAN, J.)

(S.A. BOBDE, J.)